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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,412	03/19/2004	Donald L. Crevier	ITW-13119.01	7367
44702	7590	01/12/2005	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN PC 250 PARK AVENUE, SUITE 825 NEW YORK, NY 10177			COMPTON, ERIC B	
			ART UNIT	PAPER NUMBER
			3726	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant No.

10/804,412

Applicant(s)

CREVIER, DONALD L.

Examiner

Eric B. Compton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-10, 19-23 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-10, 19-23 and 28-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/19/04 &amp; 10/28/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

1. It is noted that this application appears to claim subject matter disclosed in prior Application No. 10/150,714, filed May 17, 2002. A reference to the prior application must be inserted as the first sentence of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e) or 120. See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. Also, the current status of all nonprovisional parent applications referenced should be included.

If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C.

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119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A priority claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed claim for priority under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 4-7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 5,448,807 to Herrington, Jr.

Regarding claim 4, Herrington discloses a method of manufacturing reclosable packages (B), each package having a slider-operated zipper with end portions that function as slider end stops (30), comprising the following step

(a) transmitting sufficient ultrasonic wave energy (see Col. 4, lines 3-6 & 11-12) into first and second areas of a zipper tape to cause said first and second interlocked zipper parts (at 30) of said zipper tape to deform and fuse said first and second areas, said first and second areas being separated by a gap; and

(b) applying sufficient heat and pressure onto a third area of said zipper tape (between adjacent bags) to cause said interlocked zipper parts to deform and fuse in said third area, at least part of said third area being located between said first and second areas in said gap. See Col. 4, lines 51-54 (disclosing forming the side seal after forming end stops) & Col. 4, lines 11-12 (disclosing forming seals may either accomplished either by ultrasonic or heat means); see *a/so* U.S. Pat. 3,790,992 to Herz (cited prior art disclosing heat sealing side seal of adjacent bags).

Regarding claim 5, as shown in the Figures of the reference the zipper tape is joined prior to step (a).

Regarding claim 6, a slider (10) is mounted to the zipper tape.

Regarding claim 7, like Applicant's invention, the fourth area comprises the seal between adjacent bags from top to bottom. The third area comprises just the area of the seal between adjacent bags of the zipper tape. These areas are formed together in the process of the prior art. See U.S. Pat. 3,790,992 to Herz.

Regarding claims 9-10, the bags are cut along a line that passes between the third and fourth areas, but not the first and second areas. The cutting line bi-sects the third and fourth areas.

4. Claims 4-10, 19-23, and 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. 5,161,286 to Herrington, Jr.

Regarding claim 4, Herrington discloses a method of manufacturing reclosable packages (B), each package having a slider-operated zipper with end portions that function as slider end stops (30), comprising the following step

(a) transmitting sufficient ultrasonic wave energy (see Col. 4, lines 39-43) into first and second areas of a zipper tape to cause said first and second interlocked zipper parts (at 30a) of said zipper tape to deform and fuse said first and second areas (30a), said first and second areas being separated by a gap; and

(b) applying sufficient heat and pressure onto a third area of said zipper tape (between adjacent bags) to cause said interlocked zipper parts to deform and fuse in said third area, at least part of said third area (see Figure 5 deformed area between adjacent bags) being located between said first and second areas in said gap. See Col. 5, lines 44-47 (disclosing forming the side seal after forming end stops) & Col. 4, lines 39-43 (disclosing forming seals may either accomplished either by ultrasonic or heat means); see *a/so* U.S. Pat. 3,790,992 to Herz (cited prior art disclosing heat sealing side seal of adjacent bags).

Regarding claims 19-20, 28 and 29, the steps claimed by Applicant regarding advancing a web of film material having the zipper tape and related features directed

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towards this automated process, e.g., various stations are disclosed by the reference.

See Figure 5.

Regarding claims 5 and 21, as shown in the Figures of the reference the zipper tape is joined to the bags prior to step (a).

Regarding claims 6 and 22, a slider (10) is mounted to the zipper tape.

Regarding claims 7 and 30, like Applicant's invention, the fourth area comprises the seal between adjacent bags from top to bottom. The third area comprises just the area of the seal between adjacent bags of the zipper tape. These areas are formed together in the process of the prior art. See U.S. Pat. 3,790,992 to Herz.

Regarding claims 8, 23, and 31 as shown in Figure 8, the interlocked rail portions (16, 17) do not enter the first and second areas (30a), yet the third area (see Figure 5) shows the rails deformed in this region.

Regarding claims 9-10 and 32-33, the bags are cut along a line that passes between the third and fourth areas, but not the first and second areas. The cutting line bi-sects the third and fourth areas.

***Prior Art References***

The prior art references listed on the enclosed PTO-892, but not used in a rejection of the claims, are cited for their teachings of forming zippers of the type claimed.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric B. Compton whose telephone number is (571) 272-4527. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eric B. Compton  
Primary Examiner  
Art Unit 3726